

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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APOTEX, INC.,

Plaintiff,

v.

CEPHALON, INC., et al.,

Defendants.

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CIVIL ACTION

No. 2:06-cv-2768

**ORDER**

**AND NOW**, this 6<sup>th</sup> day of October, 2010, upon consideration of the parties' claim construction briefs, following a Markman hearing, and in accordance with the accompanying Memorandum Opinion, it is hereby **ORDERED** that:

1. Disputed claim terms "about 95% of the cumulative total of modafinil particles in said composition" mean: approximately 95% of the aggregate of the individual percent values for all measurable particles in the composition based on a volume distribution.
2. Disputed claim terms "about 95% of the cumulative total of said particles" mean: approximately 95% of the aggregate of the individual percent values for all measurable particles in the oral unit dose form based on volume distribution (claim 7) and approximately 95% of the aggregate of the individual percent values for all measurable particles in the oral unit dose based on a volume distribution (claim 16).
3. Disputed claim terms "additional modafinil particles in excess of said effective amount" mean: more modafinil particles, which have a size distribution wherein at least approximately 95% of the aggregate of the individual percent values for all

measurable particles in the oral unit dose have a diameter less than about 200 microns ( $\mu\text{m}$ ), beyond the effective amount of modafinil as defined in claim 7.

4. Disputed claim term “diameter” means: value represented by the diameter of a sphere having the same volume as measured by conventional methods known to those of skill in the art, including sieving and laser diffraction particle size analysis.
5. Dispute claim term “size distribution” means: volume distribution, based on particle size as represented by the diameter of a sphere having the same volume as measured by conventional methods known to those of skill in the art, including sieving and laser diffraction particle size analysis.
6. Disputed claim terms “modafinil particles”/ “said particles”/ “particles” mean: an aggregated physical unit of acetamide compound, i.e., a piece or a grain of acetamide.

**BY THE COURT:**

**/s/ Mitchell S. Goldberg**

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**MITCHELL S. GOLDBERG, J.**